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FROM: David H. Hitt

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ATTORNEY DOCKET NO. REIM-0001 **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Senthil Kumar, *et al.*
Serial No.:	10/032,508
Filed:	October 27, 2001
For:	MEDIA AND ADVERTISEMENT DISTRIBUTION AND TRACKING SYSTEM AND METHOD OF OPERATION THEREOF
Grp./A.U.:	2145
Examiner:	Hossain, Tanim M.

Mail Stop Appeal Brief-Patents

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ATTENTION: Board of Patent Appeals and Interferences

Sirs:

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This is an appeal from a Final Rejection dated September 20, 2005, of Claims 1-20. The Appellants submit this Brief with the statutory fee of a small entity as set forth in 37 C.F.R. § 41.20(b)(2), and hereby authorize the Commissioner to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 08-2395.

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This Brief contains these items under the following headings, and in the order set forth below in accordance with 37 C.F.R. § 41.37(c)(1):

I. REAL PARTY IN INTEREST

II. RELATED APPEALS AND INTERFERENCES

III. STATUS OF CLAIMS

IV. STATUS OF AMENDMENTS

V. SUMMARY OF CLAIMED SUBJECT MATTER

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

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VIII. APPENDIX A - CLAIMS

IX. APPENDIX B - EVIDENCE

X. APPENDIX C - RELATED PROCEEDINGS

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the Assignee, Real Image Media Technologies Pvt. Ltd.

II. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences will directly affect, be directly affected by, or have a bearing on the decision by the Board of Patent Appeals and Interferences (hereinafter "the Board") in this appeal.

III. STATUS OF THE CLAIMS

The Appellants originally submitted Claims 1-20 in the application. Claims 1-3, 7-10 and 14 currently stand as rejected under 35 U.S.C. § 102(e). Claims 4-6, 11-13, and 15-20 currently stand as rejected under 35 U.S.C. § 103(a). Accordingly, each of Claims 1-20 is being appealed.

IV. STATUS OF THE AMENDMENTS

The present Application was filed on October 27, 2001. The Appellants filed a first Amendment on July 1, 2005 in response to a first Examiner's Action mailed January 26, 2005. The Examiner entered the first Amendment and subsequently issued a Final Rejection on September 20, 2005. The Appellants then filed a second Amendment on November 21, 2005. The Examiner indicated in an Advisory Action on December 20, 2005 that the second Amendment did not place the Application in condition for allowance, and declined to enter the second amendment. The Appellants then filed a Notice of Appeal on January 20, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is directed to a media and advertisement distribution and tracking system and a method of operating such a system to distribute entertainment and advertisements and track playing of the same at remote sites. The present invention introduces the broad concept of employing a networked system to load remote players with media (e.g., audio music, music videos, nonmusic entertainment or nonentertainment information) and advertisements to allow the remote players to act as advertising-supported jukeboxes, and retrieving as-run logs to allow an analysis of

the media that has been played and to allow advertisers to be billed for playing advertisements. (*See* ¶ 13.)

Independent Claim 1 is directed to a media and advertisement distribution and tracking system. (*See* ¶ 26.) The system distributes media to remote players via a computer network according to corresponding playback rules. (*See* ¶¶ 28, 35.) The remote players are configured to convert the media to audio or video content for listening or viewing by an audience. (*See* ¶ 29.) An advertisement server distributes advertisements to the remote players via the computer network according to corresponding advertising schedules. (*See* ¶¶ 30, 31, 43, 44.) A tracking subsystem including a reporting and billing workstation retrieves as-run logs from the remote players via the computer network and generates media and advertisement play reports and advertisement billing reports therefrom. (*See* ¶ 32.)

Independent claim 15 is directed to a music and advertising distribution and tracking system. The system including a media server that distributes music to remote players via the Internet according to corresponding playback rules, where the remote players are configured to play back the music for listening by an audience. (*See* ¶¶ 28, 29, 35.) An advertisement server distributes advertisements to the remote players via the Internet according to corresponding advertising schedules. (*See* ¶¶ 30, 31, 43, 44.) A skin server distributes skins to the remote players via the Internet according to skin selection rules. (*See* ¶¶ 40, 42.) A tracking subsystem retrieves as-run logs via the Internet from the remote players and generates music and advertisement play reports and advertisement billing report from the as-run logs. (*See* ¶ 32.)

In one embodiment, a system 100 includes a client handler server cluster 160 coupled to a media server 110. (*See* FIG. 1; ¶ 33.) The media server 110 stores media, and is responsible for

distributing its media to remote players 120. (*See* ¶¶ 27, 28.) The media server 110 may also act as a skin server. (*See* ¶ 40.) An advertisement server 140 is coupled to a playback data database 141, advertising schedules database 142 and metadata database 143. (*See* FIG. 1; ¶ 30, 33.) The advertisement server 140 distributes advertisements to the remote players 120 via a computer network 130, which may be the Internet. (*See* ¶¶ 28, 31.) The distribution of advertisements is mediated by the advertising schedules database 142. (*See* ¶¶ 30, 31.) The remote players may be any type of hardware or software capable of playing the distributed media and advertising and returning as-run logs describing what they have played and when. (*See* ¶ 29.)

An embodiment may further include advertising scheduling workstations (including an advertising scheduling workstation 180 and a remote advertising scheduling workstation 185) that can be employed to load advertising schedules into the QJam advertising schedules database 142. (*See* ¶ 43.) The system 100 may include a reporting and billing workstation 150 and a remote reporting and billing workstation 175. (*See* FIG. 1; ¶ 49.) These, either separately or in concert may operate to receive the as-run logs of the remote players and synthesize, from those logs, detailed reports of what media and advertisements were played at what time and on what remote player. (*See* ¶ 49.)

Independent Claim 8 is directed to a method of distributing and tracking media and advertisements. (*See* FIG. 2; ¶ 52, *et seq.*) The method includes distributing media to remote players via a computer network according to corresponding playback rules. (*See* ¶¶ 53, 54.) The remote players are configured to convert the media to audio or video content for listening or viewing by an audience. (*See* ¶ 29.) The advertisements are distributed to the remote players via the computer network according to corresponding advertising schedules. (*See* ¶¶ 55, 57.) As-run logs from the

remote players are retrieved via the computer network. (*See* ¶ 58.) Media and advertisement play reports, and advertisement billing reports are generated from the as-run log. (*See* ¶ 59.)

In an embodiment, a method 200 may be employed to distribute and track media and advertisements. (*See* FIG. 2; ¶ 52.) The method 200 includes a step 210, in which media are created or converted into a form suitable for loading into a media server and then loaded into the media server. (*See* FIG. 2; ¶ 53.) In a step 215, playback rules are loaded into the media server. (*See* FIG. 2; ¶ 54.) In a step 220, advertisements are loaded into an advertisement server. (*See* FIG. 2; ¶ 55.) Advertisers themselves may have direct access to upload their own commercials. (*See* ¶ 55.) In a step 225, advertising rules are formulated and employed to build advertising schedules. (*See* FIG. 2; ¶ 55.) In a step 230, the advertising schedules are loaded into an advertisement server. (*See* FIG. 2; ¶ 55.) In a step 235, skins and skin rules are loaded into a skin server. (*See* FIG. 2; ¶ 56.)

In a step 240, the media are distributed to the remote players according to the corresponding playback rules. (*See* FIG. 2; ¶ 57.) Then, in a step 245, the advertisements are distributed to the remote players according to the corresponding advertising schedules. (Id.) Next, in a step 250, the skins are distributed to the remote players according to the skin rules. (Id.) In a step 255, as-run logs are retrieved from the remote players. (*See* FIG. 2; ¶ 58.) In a step 260 media and advertisement play reports and advertisement billing reports can be generated. (*See* FIG. 2; ¶ 59.)

In a step 265, the playback rules may be adjusted based on media play information. (*See* FIG. 2; ¶ 60.) In a step 270, the advertising schedules may be adjusted based on advertisement play information. (Id.) In a step 275, the advertisers may be allowed to view ones of the media and advertisement play reports and advertisement billing reports to analyze play patterns and pay their bills. (Id.) The method 200 then returns to the step 240, wherein further media, advertising and

skins are created, distributed and tracked as called for by the various playback rules, advertising schedules and skin rules, and advertisers are billed and pay for advertising played. (*See* FIG. 2; ¶ 61.)

Regarding the dependent claims, the media server may adjust playback rules based on the media play information. (*See* ¶ 38.) The advertisement server may adjust the advertising schedules based on the advertisement play information. (*See* ¶ 47.) Playback rules may include aspects selected from the group consisting of: (1) geographic location of the remote players, (2) establishment type in which the remote players are located, (3) demographics of establishment in which the remote players are located, (4) media playback history for the remote players, (5) time of day, (6) date, (7) day of week, (8) month of year and (9) season of year. (*See* ¶ 35.) The advertisement schedules may be based on aspects selected from the group consisting of: (1) geographic location of the remote players, (2) establishment type in which the remote players are located, (3) demographics of establishment in which the remote players are located, (4) sequence, (5) proximity of particular media being played, (6) time of day, (7) date, (8) day of week, (9) month of year and (10) season of year. (*See* ¶ 44.) The advertising server 140 may include an interface that allows advertisers to upload advertisements and modify the advertising schedules directly and to view media and advertisement play reports and advertisement billing reports. (*See* ¶ 48.) The computer network may be the Internet. (*See* ¶ 20.)

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(A) Whether Claims 1-3, 7-10 and 14 are anticipated in accordance with 35 U.S.C. § 102(e) by U.S. Patent Application No. 2002/0073084 to Kauffman, *et al.* (Kauffman).

(B) Whether Claims 4 and 11 are obvious in accordance with 35 U.S.C. § 103(a) over Kauffman as applied to Claims 1 and 8 above, and further in view of U.S. Patent No. 6,256,554 to DiLorenzo, *et al.* (DiLorenzo).

(C) Whether Claims 5 and 12 are obvious in accordance with 35 U.S.C. § 103(a) over Kauffman as applied to Claims 1 and 8 above, and further in view of U.S. Patent No. 6,144,944 to Kurtzman, II, *et al.* (Kurtzman).

(D) Whether Claims 6 and 13 are obvious in accordance with 35 U.S.C. § 103(a) over Kauffman as applied to Claims 1 and 8 above, and further in view of U.S. Patent Application No. 2001/0044855 to Vermeire, *et al.* (Vermeire).

(E) Whether Claims 15-17 are obvious in accordance with 35 U.S.C. § 103(a) over Kauffman in view of U.S. Patent Application No. 2002/0046279 to Chung. (Chung).

(F) Whether Claim 18 is obvious in accordance with 35 U.S.C. § 103(a) over Kauffman in view of DiLorenzo, in further view of Chung.

(G) Whether Claim 19 is obvious in accordance with 35 U.S.C. § 103(a) over Kauffman in view of Kurtzman, in further view of Chung.

(H) Whether Claim 20 is obvious in accordance with 35 U.S.C. § 103(a) over Kauffman in view of Vermeire, in further view of Chung.

VII. APPELLANTS' ARGUMENT

The inventions set forth in independent Claims 1, 8 and 15 and their respective dependent claims are neither anticipated by nor obvious over the references on which the Examiner relies.

Rejection under 35 U.S.C. § 102(e) over Kauffman

A. Rejection of Claims 1 and 8

The Examiner has incorrectly asserted that Kauffman anticipates each and every element of Claims 1 and 8. Both Claims include the element of "remote player." Claim 1 includes the element of "a tracking subsystem that retrieves as-run logs from said remote players." Claim 8 includes the element "retrieving as-run logs from said remote players." Kauffman does not teach these elements of these claims.

Kauffman does not teach a remote player. A remote player is "any type of hardware or software capable of playing the distributed media and advertising and returning as-run logs describing what they have played and when." (Specification, ¶ 29.) Kauffman does teach a television 12. (*See* ¶ 0009.) However, the television 12 is not a remote player because it not capable of returning as-run logs. (*See* id.) Kauffman explicitly makes this distinction by setting forth that statistics on media may be returned by an advertisement cache, but the advertisement cache is not located in the television 12. Instead, the advertisement cache is located on a signal path "*at the extreme*" in a set-top box 14, not in the television 12. (*See* ¶¶ 0009, 0010, emphasis added.) Therefore, the television 12 is not a remote player.

Kauffman also teaches a computer terminal 16 that may be used to receive multimedia information, but the computer terminal 16 is also not a remote player. Kauffman teaches that the computer may include software to convert received files and play them on a display. (*See* ¶ 0017.)

But Kauffman is silent with respect to the computer being capable of returning as-run logs. Because Kauffman teaches explicitly that the advertisement cache could be located as far along a signal path as a set-top box 14, but *no further*, the reference as a whole teaches that the computer terminal 14 is not capable of returning as-run logs. Therefore, the computer terminal 14 is not a remote player. Thus, Kauffman does not teach a remote player, and Claims 1 and 8 are not anticipated.

Furthermore, even if Kauffman does teach a remote player, while maintaining that he does not, he does not teach "retriev[ing] as-run logs from said remote players." As set forth above, Kauffman does not contemplate an advertisement cache placed in the media stream farther downstream than a set-top box. Therefore, a remote player cannot have a capability to return as-run logs. Without such a capability, Kauffman cannot anticipate a tracking system retrieving as-run logs from remote players. Thus, Kauffman does not teach this element, and Claims 1 and 8 are not anticipated.

Because Kauffman does not teach a remote player, or retrieving as-run logs therefrom, Kauffman fails to anticipate each and every element of claims 1 and 8. Therefore, Claims 1 and 8 are not anticipated under 35 U.S.C. § 102(e). Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of Claims 1 and 8.

B. Rejection of Claims 2 and 9

Claims 2 and 9 are patentable under 35 U.S.C. § 102(e) over Kauffman. The above argument establishing that Kaufmann does not anticipate each and every limitation of independent Claims 1 and 8 is incorporated herein by reference. Because dependent Claims 2 and 9 include the limitations of their respective base claims, these claims are also novel over Kauffman.

Moreover, Claims 2 and 9 additionally require that the media server adjusts the playback rules based on the media play information and are therefore patentably distinct. The Examiner cites ¶ 0017 of Kauffman as teaching this element, but the Examiner is not correct. (*See* Sep. 20 Response, page 2.) Kauffman teaches that an end-user 10 may send a request for a multimedia file to be downloaded, and that a multimedia server 26 may respond to the request. (*See* ¶ 0017.) Responding to a request is not adjusting playback rules, and is not equivalent thereto. But even if such a response were to be regarded as adjusting playback rules, such rules are not adjusted in response to media play information, because a user request is not media play information.

Thus, Kauffman does not teach the limitation of Claims 2 and 9 and the Claims are novel over Kauffman. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of Claim 2 and 9.

C. Rejection of Claims 3 and 10

Claims 3 and 10 are patentable under 35 U.S.C. § 102(e) over Kauffman. The above argument establishing that Kaufmann does not anticipate each and every limitation of independent Claims 1 and 8 is incorporated herein by reference. Because dependent Claims 3 and 10 include the limitations of their respective base claims, these claims are also novel over Kauffman.

Furthermore, Claims 3 and 10 additionally include the limitation that the advertisement server adjusts the advertising schedules based on advertisement play information. The Examiner cites ¶ 0019 of Kauffman as teaching this element, but the Examiner is not correct. (*See* Sep. 20 Response, page 3.) Kauffman teaches that an identity of an end-user 10 may be forwarded to a rule server 40 which can determine a *type* of advertisement that would most likely be of interest to the end-user 10. (*See* ¶ 0019.) But there is no teaching in the portion cited by the Examiner that an

advertising *schedule* is adjusted. Even if there were, while maintaining that there is not, such adjustment would only be based on an *identity* of the end-user 10, not on *advertisement play information* retrieved from as-run logs.

Thus, Kauffman does not teach the limitation of Claims 3 and 10 and the Claims are novel over Kauffman. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of Claim 3 and 10.

D. Rejection of Claims 7 and 14

Claims 7 and 14 are patentable under 35 U.S.C. § 102(e) over Kauffman. The above argument establishing that Kauffman does not anticipate each and every limitation of independent Claims 1 and 8 is incorporated herein by reference. Dependent Claims 7 and 14 additionally require that the computer network is the Internet. Because Kauffman fails to anticipate each and every limitation of the independent Claims 1 and 8, Claims 7 and 14, which respectively depend therefrom, are novel over Kauffman. Accordingly, the Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's Final Rejection of Claim 7 and 14.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of DiLorenzo

E. Rejection of Claims 4 and 11

Claims 4 and 11 are patentable under 35 U.S.C. § 103(a) over Kauffman in view of DiLorenzo. The above argument establishing that Kauffman does not anticipate each and every limitation of independent Claims 1 and 8 is incorporated herein by reference.

In addition to the limitations of Claims 1 and 8, dependent Claims 4 and 11 recite the additional limitation that the playback rules include aspects selected from the group consisting of 1)

geographic location of said remote players, 2) establishment type in which said remote players are located, 3) demographics of establishment in which said remote players are located, 4) media playback history for said remote players, 5) time of day, 6) date, 7) day of week, 8) month of year, and 9) season of year. The Examiner cites DiLorenzo for teaching "a media player in a hotel establishment that offers media selections based on location, which governs establishment type, demographics, history, and time considerations." (*See* Dec. 20 Response, page 3, citing DiLorenzo, col. 6, lines 25-43.) But the Examiner does not cite, and the Appellants do not find, any teaching or suggestion of a remote player, or retrieving as-run logs therefrom in DiLorenzo.

Therefore, the combination of Kauffman and DiLorenzo fails to teach or suggest each and every limitation of Claims 4 and 11, and these claims are nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of these claims.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of Kurtzman

F. Rejection of Claims 5 and 12

Claims 5 and 12 are patentable under 35 U.S.C. § 103(a) over Kauffman in view of Kurtzman. The above argument establishing that Kauffman does not anticipate each and every limitation of independent Claims 1 and 8 is incorporated herein by reference.

In addition to the limitations of Claims 1 and 8, dependent claims 5 and 12 recite the additional limitation that the advertising schedules are based on aspects selected from the group consisting of 1) geographic location of said remote players, 2) establishment type in which said remote players are located, 3) demographics of establishment in which said remote players are located, 4) sequence, 5) proximity to particular media being played, 6) time of day, 7) date, 8) day of

week, 9) month of year, and 10) season of year. The Examiner cites Kurtzman for teaching "advertising engines which offer advertisements based on location of interest, including establishment type, demographics, and relevance to media" (*See* Sep. 20 Response, page 4, citing Kurtzman, col. 3, line 57 to col. 4, line 4; col. 4, line 64 to col. 5, line15; col. 6, lines 22-36.) But the Examiner does not cite, and the Appellants do not find, any teaching or suggestion of a remote player, or retrieving as-run logs therefrom in Kurtzman.

Therefore, the combination of Kauffman and Kurtzman fails to teach or suggest each and every limitation of Claims 5 and 12, and these claims are nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of these claims.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of Vermeire

G. Rejection of Claims 6 and 13

Claims 6 and 13 are patentable under 35 U.S.C. § 103(a) over Kauffman in view of Vermeire. The above argument establishing that Kauffman does not anticipate each and every limitation of independent Claims 1 and 8 is incorporated herein by reference.

In addition to the limitations of Claims 1 and 8, dependent Claims 6 and 13 recite the additional limitation that the "advertising server comprises an interface that allows advertisers to upload said advertisements and modify said advertising schedules directly and to view ones of said media and advertisement play reports and advertisement billing reports." The Examiner cites Vermeire for teaching "the ability for advertisers to upload advertisements directly, and to chose scheduling of advertisements" (*See* Sep. 20 Response, page 5, citing Vermeire, ¶ 0020.) But the

Examiner does not cite, and the Appellants do not find, any teaching or suggestion of a remote player, or retrieving as-run logs therefrom.

Furthermore, even if Vermeire teaches a remote player and retrieving as-run logs therefrom, while maintaining that he does not, Claims 6 and 13 include the additional limitation recited above, and thereby introduce a patentably distinct element in addition to the elements recited in Claims 1 and 8, respectively.

The combination of Kauffman and Vermeire, however, does not teach "allows advertisers ... to view ones of said media and advertisement play reports and advertisement billing reports" as recited in Claims 6 and 13. The Examiner does not allege that the combination teaches or suggests this element, and the Appellants do not find any such teaching or suggestion thereof.

Therefore, the combination of Kauffman and Vermeire fails to teach or suggest each and every limitation of Claims 6 and 13, and these claims are nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of these claims.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of Chung

H. Rejection of Claims 15-17

Claims 15-17 are patentable under 35 U.S.C. § 103(a) over Kauffman in view of Chung. The Examiner asserts that claims 15-17 are obvious over the cited combination. However, the combination fails to teach or suggest each and every element of Claims 15-17.

Initially addressing Claim 15, the above argument establishing that Kauffman does not anticipate each and every limitation of independent Claim 1 is incorporated herein by reference. Claim 15 includes the limitations of Claim 1, and recites the additional limitation of "a skin server

that distributes skins to said remote players via the Internet according to skin selection rules." The Examiner cites Chung for teaching "a skin server storing and delivering skins" (*See* Dec. 20 Response, Page 6, citing Chung, ¶ 0009.) But the Examiner does not cite, and the Appellants do not find, any teaching or suggestion of a remote player, or retrieving as-run logs therefrom. Therefore, the combination of Kauffman and Chung fails to teach or suggest each and every limitation of Claim 15, and the claim is allowable.

With respect to Claim 16, the above argument establishing that Kauffman does not anticipate each and every limitation of Claim 2 is incorporated herein by reference. The Examiner applies the rejection of Claim 2 to Claim 16 in combination with Chung. But the Appellants find no teaching or suggestion in the combination of Kauffman and Chung of a remote player, or retrieving as-run logs from a remote player, as recited in Claim 15, from which Claim 16 depends. Furthermore, the Appellants find no teaching or suggestion that the media server adjusts the playback rules based on the media play information, as recited in Claim 16. Therefore, the combination of Kauffman and Chung fails to teach or suggest each and every limitation of Claim 16, and the claim is allowable.

With respect to Claim 17, the above argument establishing that Kauffman does not anticipate each and every limitation of Claim 3 is incorporated herein by reference. The Examiner applies the rejection of Claim 3 to Claim 17 in combination with Chung. But the Appellants find no teaching or suggestion in the combination of Kauffman and Chung of a remote player, or retrieving as-run logs from a remote player, as recited in Claim 15, from which Claim 17 depends. Furthermore, the Appellants find no teaching or suggestion of adjusting an advertising schedule, or basing such an adjustment on advertisement play information retrieved from as-run logs, as recited in Claim 17.

Therefore, the combination of Kauffman and Chung fails to teach or suggest each and every limitation of Claim 17, and the claim is allowable.

Therefore, the combination of Kauffman and Chung fails to teach or suggest each and every limitation of Claim 15-17, and these claims are nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of these claims.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of DiLorenzo, in further view of Chung

I. Rejection of Claim 18

Claim 18 is patentable under 35 U.S.C. § 103(a) over Kauffman in view of DiLorenzo, in further view of Chung. The above argument with respect to Claim 4 establishing that the claim is nonobvious over Kauffman in view of DiLorenzo is incorporated herein by reference.

Claim 18 depends from Claim 15, which includes the limitations of "a media server that distributes music to remote players," and "a tracking subsystem that retrieves as-run logs via the Internet from said remote players." As established previously with respect to Claim 4, the combination of Kauffman and DiLorenzo fails to teach or suggest these elements. Furthermore, the Appellants find no teaching or suggestion in the combination of Kauffman, DiLorenzo and Chung of these missing elements.

Therefore, the combination of Kauffman, DiLorenzo and Chung fails to teach or suggest each and every limitation of Claim 18, and the claim is nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of this claim.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of Kurtzman, in further view of Chung

J. Rejection of Claim 19

Claim 19 is patentable under 35 U.S.C. § 103(a) over Kauffman in view of Kurtzman, in further view of Chung. The above argument with respect to Claim 5 establishing that the claim is nonobvious over Kauffman in view of Kurtzman is incorporated herein by reference.

Claim 19 depends from Claim 15, which includes the limitations of "a media server that distributes music to remote players," and "a tracking subsystem that retrieves as-run logs via the Internet from said remote players." As established previously with respect to Claim 5, the combination of Kauffman and Kurtzman fails to teach or suggest these elements. Furthermore, the Appellants find no suggestion in the combination of Kauffman, Kurtzman and Chung of these missing elements.

Therefore, the combination of Kauffman, Kurtzman and Chung fails to teach or suggest each and every limitation of Claim 19, and the claim is nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of this claim.

Rejection under 35 U.S.C. 103(a) over Kauffman in view of Vermeire, in further view of Chung

K. Rejection of Claim 20

Claim 20 is patentable under 35 U.S.C. § 103(a) over Kauffman in view of Vermeire, in further view of Chung. The above argument with respect to Claim 6 establishing that the claim is nonobvious over Kauffman in view of Vermeire is incorporated herein by reference.

Claim 20 depends from Claim 15, which includes the limitations of "a media server that distributes music to remote players," and "a tracking subsystem that retrieves as-run logs via the

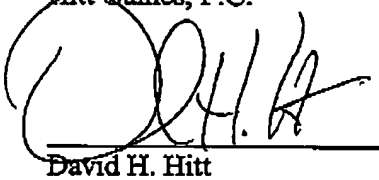
Internet from said remote players." As established previously with respect to Claim 6, the combination of Kauffman and Vermeire fails to teach or suggest these elements. Furthermore, the Appellants find no suggestion in the combination of Kauffman, Vermeire and Chung of these missing elements.

Therefore, the combination of Kauffman, Vermeire and Chung fails to teach or suggest each and every limitation of Claim 20, and the claim is nonobvious over the cited combination. Accordingly, the Appellants respectfully request that the Board reverse the Examiner's Final Rejection of this claim.

In summary, the inventions set forth in Claims 1-20 are novel and nonobvious over the references cited by the Examiner. The Appellants therefore respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's Final Rejection of Claims 1-20.

Respectfully submitted,

Hitt Gaines, P.C.



David H. Hitt
Registration No. 33,182

Dated: March 20, 2006

Hitt Gaines, P.C.
P.O. Box 832570
Richardson, Texas 75083-2570
(972) 480-8800
(972) 480-8865 (Fax)
E-Mail:david.hitt@hittgaines.com

VIII. APPENDIX A - CLAIMS

1. For use with a computer network, a media and advertisement distribution and tracking system, comprising:

a media server that distributes media to remote players via said computer network according to corresponding playback rules, said remote players configured to convert said media to audio or video content for listening or viewing by an audience;

an advertisement server that distributes advertisements to said remote players via said computer network according to corresponding advertising schedules; and

a tracking subsystem that retrieves as-run logs from said remote players via said computer network and generates media and advertisement play reports and advertisement billing reports therefrom.

2. The system as recited in Claim 1 wherein said media server adjusts said playback rules based on said media play information.

3. The system as recited in Claim 1 wherein said advertisement server adjusts said advertising schedules based on said advertisement play information.

4. The system as recited in Claim 1 wherein said playback rules include aspects selected from the group consisting of:

geographic location of said remote players,

establishment type in which said remote players are located,

demographics of establishment in which said remote players are located,

media playback history for said remote players,

time of day,

date,

day of week,

month of year, and

season of year.

5. The system as recited in Claim 1 wherein said advertising schedules are based on aspects selected from the group consisting of:

geographic location of said remote players,

establishment type in which said remote players are located,

demographics of establishment in which said remote players are located,

sequence,

proximity to particular media being played,

time of day,

date,

day of week,

month of year, and

season of year.

6. The system as recited in Claim 1 wherein said advertising server comprises an interface that allows advertisers to upload said advertisements and modify said advertising schedules directly and to view ones of said media and advertisement play reports and advertisement billing reports.

7. The system as recited in Claim 1 wherein said computer network is the Internet.

8. A method of distributing and tracking media and advertisements, comprising:

distributing media to remote players via said computer network according to corresponding playback rules, said remote players configured to convert said media to audio or video content for listening or viewing by an audience;

distributing advertisements to said remote players via said computer network according to corresponding advertising schedules;

retrieving as-run logs from said remote players via said computer network; and

generating media and advertisement play reports and advertisement billing reports from said as-run log.

9. The method as recited in Claim 8 further comprising adjusting said playback rules based on said media play information.

10. The method as recited in Claim 8 further comprising adjusting said advertising schedules based on said advertisement play information.

11. The method as recited in Claim 8 wherein said playback rules include aspects selected from the group consisting of:

geographic location of said remote players,

establishment type in which said remote players are located,

demographics of establishment in which said remote players are located,

media playback history for said remote players,

time of day,

date,

day of week,

month of year, and

season of year.

12. The method as recited in Claim 8 wherein said advertising schedules are based on aspects selected from the group consisting of:

geographic location of said remote players,

establishment type in which said remote players are located,

demographics of establishment in which said remote players are located,

sequence,

proximity to particular media being played,

time of day,

date,

day of week,

month of year, and

season of year.

13. The method as recited in Claim 8 further comprising allowing advertisers to upload said advertisements and modify said advertising schedules directly and to view ones of said media and advertisement play reports and advertisement billing reports.

14. The method as recited in Claim 8 wherein said computer network is the Internet.

15. A music and advertisement distribution and tracking system, comprising:

a media server that distributes music to remote players via the Internet according to corresponding playback rules, said remote players configured to play back said music for listening by an audience;

an advertisement server that distributes advertisements to said remote players via the Internet according to corresponding advertising schedules;

a skin server that distributes skins to said remote players via the Internet according to skin selection rules; and

a tracking subsystem that retrieves as-run logs via the Internet from said remote players and generates music and advertisement play reports and advertisement billing reports therefrom.

16. The system as recited in Claim 15 wherein said media server adjusts said playback rules based on said music play information.

17. The system as recited in Claim 15 wherein said advertisement server adjusts said advertising schedules based on said advertisement play information.

18. The system as recited in Claim 15 wherein said playback rules include aspects selected from the group consisting of:

geographic location of said remote players,

establishment type in which said remote players are located,

demographics of establishment in which said remote players are located,

music playback history for said remote players,

time of day,

date,

day of week,

month of year, and

season of year.

19. The system as recited in Claim 15 wherein said advertising schedules are based on aspects selected from the group consisting of:

geographic location of said remote players,

establishment type in which said remote players are located,

demographics of establishment in which said remote players are located,

sequence,

proximity to particular music being played,

time of day,

date,

day of week,

month of year, and

season of year.

20. The system as recited in Claim 15 wherein said advertising server comprises an interface that allows advertisers to upload said advertisements and modify said advertising schedules directly and to view ones of said music and advertisement play reports and advertisement billing reports.

IX. APPENDIX B - EVIDENCE

The evidence in this appendix includes Kauffman, DiLorenzo, Kurtzman, Vermeire and Chung. Each reference was entered in the record by the Examiner with the January 26, 2005 Examiner's Office Action.

X. APPENDIX C - RELATED PROCEEDINGS

NONE